



DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS-R8-ES-2022-N005; FXES11140800000-223-FF08ECAR00]

Endangered and Threatened Species; Receipt of an Incidental Take Permit Application and Low-Effect Habitat Conservation Plan for the Big Tujunga Dam Project, Los Angeles County Department of Public Works, Los Angeles County, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce the availability of a draft habitat conservation plan (HCP) and draft categorical exclusion for activities associated with continued operation and maintenance of Big Tujunga Dam and a spillway improvement project. Los Angeles County Department of Public Works (applicant) developed a draft HCP as part of their application for an incidental take permit (ITP) under the Endangered Species Act of 1973, as amended. The Los Angeles Department of Water and Power would be a participating agency. The Service prepared a draft low-effect screening form and environmental action statement in accordance with the National Environmental Policy Act (NEPA) to evaluate the potential effects to the natural

and human environment resulting from issuing an ITP to the applicant. We invite public comment on these documents.

DATES: To ensure consideration, please send your written comments on or before

[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: Obtaining Documents: The documents this notice announces, as well as any comments and other materials that we receive, will be available for public inspection online at <https://pw.lacounty.gov/wrd/projects/bigtujunga/>.

Submitting Comments: You may submit comments by email at fw8cfwocomments@fws.gov. Please reference Big Tujunga Dam Project in the subject line of your email.

FOR FURTHER INFORMATION CONTACT: Jesse Bennett, Fish and Wildlife Biologist, Carlsbad Fish and Wildlife Office, via phone at 760-431-9440 or email at fw8cfwocomments@fws.gov.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service (Service), received an application from the Los Angeles County Department of Public Works (applicant) for an incidental take permit under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The applicant has requested take authorization for the federally endangered arroyo toad (*Anaxyrus californicus*), southwestern willow flycatcher (*Empidonax traillii extimus*), and least Bell's vireo (*Vireo bellii pusillus*); the federally threatened Santa Ana sucker (*Catostomus santaanae*) and western distinct population segment of the yellow-billed cuckoo (*Coccyzus americanus*);

and the non-federally listed arroyo chub (*Gila orcuttii*), Santa Ana speckled dace (*Rhinichthys osculus*), and southwestern pond turtle (*Actinemys pallida*), incidental to activities associated with the continued operation and maintenance of Big Tujunga Dam in Los Angeles County, California, and a spillway improvement project. The Service prepared a draft low-effect screening form and environmental action statement in accordance with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) to evaluate the potential effects to the natural and human environment resulting from issuing an ITP to the applicant. We invite public comment on these documents.

Background

The Service listed the arroyo toad as endangered on December 16, 1994 (59 FR 64859), and published a revised final rule designating critical habitat on February 7, 2001 (66 FR 9414). The Service listed the southwestern willow flycatcher as endangered on February 27, 1995 (60 FR 10695), and published a revised final rule designating critical habitat on January 3, 2013 (78 FR 344534). The Service listed the least Bell's vireo as endangered on May 2, 1986 (51 FR 16474), and published a final rule designating critical habitat on February 2, 1994 (59 FR 4845). The Service listed the Santa Ana sucker as threatened on April 12, 2000 (65 FR 19686), and published a revised final rule designating critical habitat on December 14, 2010 (75 FR 77962). The Service listed the yellow-billed cuckoo as threatened on October 3, 2014 (79 FR 59992), and published a final rule designating critical habitat on April 21, 2021 (86 FR 20798).

Section 9 of the ESA prohibits take of fish and wildlife species listed as endangered (16 U.S.C. 1538). Under the ESA, "take" is defined to include the following activities: "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct" (16 U.S.C. 1532). Section 4(d) of the ESA allows the Secretary to extend protections for endangered species to those listed as threatened. Under section 10(a)(1)(B) of the ESA (16 U.S.C. 1539(a)(1)(B)), we may issue permits

to authorize take of listed fish and wildlife species that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Regulations governing incidental take permits for endangered and threatened species are in the Code of Federal Regulations (CFR) at 50 CFR 17.22 and 17.32. Issuance of an ITP also must not be likely to jeopardize the continued existence of federally listed fish, wildlife, or plant species, pursuant to section 7 of the ESA and 50 CFR Part 402. The permittee would receive assurances under our “No Surprises” regulations (50 CFR 17.22(b)(5) and 17.32(b)(5)).

Project

Big Tujunga Dam is a 244-foot high dam located on Big Tujunga River in the Angeles National Forest, Los Angeles County, California. The applicant requests a 30-year incidental take permit for operation and maintenance of Big Tujunga Dam, which regulates stream flows in the Big Tujunga River from Big Tujunga Dam downstream to Hansen Dam, a distance of approximately 14 miles. The incidental take permit would also address a spillway improvement project at Big Tujunga Dam.

The applicant proposes to mitigate or minimize impacts through ramping of water conservation releases during the spawning season of fish, providing up to 1,500 acre-feet of water in supplemental flows during the dry season, monitoring and adaptive management to benefit covered species, funding of nonnative species removal or other recovery measures, and best management practices. The proposed plan also allows for the potential translocation of Santa Ana sucker upstream of Big Tujunga Dam to expand the range of this species.

Our Preliminary Determination

The Service has made a preliminary determination that issuance of the ITP and implementation of the project is not a major Federal action that will significantly affect the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*). Moreover, issuance

of the ITP and implementation of the project individually and cumulatively will not have more than a minor or negligible effect on federally listed or covered species and the environment. Therefore, we have preliminarily concluded that the ITP for this project would qualify for categorical exclusion as provided by our NEPA regulations at 43 CFR 46.205 and 46.215.

Next Steps

We will evaluate the proposed HCP and any comments received to determine whether to issue the requested permit. We will also conduct an intra-Service consultation pursuant to section 7 of the ESA to evaluate the effects of our proposed action. After considering the above findings, we will determine whether the permit issuance criteria of section 10(a)(1)(B) of the ESA have been met. If the criteria are met, we will issue the permit to the applicant for incidental take.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

We provide this notice under section 10(c) of the ESA (16 U.S.C. 1539 *et seq.*) and NEPA regulations (40 CFR 1506.6).

**Kristine Petersen,
Acting Field Supervisor,
Carlsbad Fish and Wildlife Office,
Carlsbad, California.**

